

Background and Relevant Tax Law

The Bureau obtained information from the [Redacted] State Liquor Control Board that the taxpayer transferred cider, wine, and beer barrels into Idaho. The Bureau inquired of the taxpayer as to the alcoholic strength and quantity of the beer that was transferred, but the taxpayer failed to provide the necessary information. Therefore, the Bureau estimated the quantity and imposed the higher of two available taxes based on alcoholic content. The higher tax is identical to the wine tax (Idaho Code §§ 23-1002(2) and 23-1319). The taxpayer disagrees with this assertion. The relevant statutes read as follows:

Beer containing more than four per cent (4%) of alcohol by weight shall be considered and taxed as wine (Idaho Code § 23-1002(2)).

Upon all wines sold by a distributor or winery to a retailer or consumer and upon all wines sold and shipped directly to Idaho state residents by an out-of-state wine manufacturer holding a wine direct shipper permit under section 23-1309A, Idaho Code, for use within the state of Idaho pursuant to this chapter there is hereby imposed an excise tax of forty-five cents (45¢) per gallon. (Idaho Code § 23-1319, excerpted in relevant part).

According to the auditor, while the taxpayer objects to the imposition of wine tax on the imported beer, it did not object to the imposition of wine tax on its imported wine. Liability on the cider transported to Idaho was not included in the Notice due to the statute of limitations having expired.

Taxpayer's Protest

The taxpayer's protest letter states several objections. The letter claims that beer it transported to and sold in Idaho was not "strong" beer that should be taxed as wine. It objects to a wine tax imposed on beer, believing the characterization difficult to comply with and comprehend. The taxpayer claims that it did not have the correct forms for filing taxes appropriately, and objects to the lack of information from the Commission prior to the audit and

issuance of the Notice. Further, the letter refers to various levies unrelated to the Notice. Finally, with no indication as to how the calculation was determined, the taxpayer asks that the liability be reduced to \$7,000.

Analysis and Conclusion

There is no statutory basis for abating tax, penalty, or interest under the taxpayer's presumption that the Commission should have proactively notified the taxpayer of what forms to file prior to the audit and issuance of the Notice.

The taxpayer's protest did not include information sufficient to reduce the liability and, as noted, the taxpayer did not respond to repeated requests to attend a hearing. Thus, the taxpayer did not provide evidence adequate to establish that the amount asserted in the Notice is incorrect. As a result, the Commission will uphold the Notice. A determination of the Commission is presumed to be correct (Albertson's, Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814, 683 P.2d 846, 850 1984) and the burden is on the taxpayer to show that the deficiency is erroneous (Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 Ct. App. 1986.)

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau to be a reasonable representation of the taxpayer's wine tax liability for the period April 30, 2009, through September 30, 2011.

The Bureau added interest and penalty to the tax deficiency. The Commission found both to be appropriate per Idaho Code sections 63-3045 and 63-3046(b), and has updated interest accordingly. Interest is calculated through November 11, 2013, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

THEREFORE, the Notice dated May 16, 2012, is hereby APPROVED, in accordance with the provisions of this decision, and is AFFIRMED and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax, penalty, and interest:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$18,470	\$9,235	\$2,350	\$30,055

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed.

DATED this _____ day of _____ 2013.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____ 2013, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
